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Letter dated 21 July 2008 from the Permanent Representative of Thailand to the United Nations addressed to the President of the Security Council

Upon the instruction of my Government and with reference to the letter dated 18 July 2008 from the Permanent Representative of the Kingdom of Cambodia addressed to you concerning Thai-Cambodia relations (S/2008/470), I have the honour to inform you as follows:

1. The Kingdom of Thailand has always attached great importance to the cordial relations with the Kingdom of Cambodia, which is her close neighbour and family member of the Association of Southeast Asian Nations (ASEAN). As in all regions of the world, it is not unusual for countries sharing a long common border to have border/boundary issues between them, and Thailand and Cambodia are no exceptions. However, through friendly bilateral consultations and negotiations, every past challenge had been resolved amicably, a fact which underlines the depth and strength of relations between our two countries. It is in this spirit and with this conviction that the Royal Thai Government approaches the issue regarding the area adjacent to the Temple of Preah Vihear. From the beginning, the Royal Thai Government has been determined to seek a just and peaceful solution to this challenge through the existing bilateral consultative frameworks on the basis of friendship, goodwill and cooperation that have long existed between our two Governments and peoples.

2. Consistent with the above spirit, the Prime Ministers of both Thailand and Cambodia have already pledged the utmost restraint and expressed their conviction to resolve the issue through existing bilateral consultations and negotiations. As the first step, the special session of the Thai-Cambodian General Border Committee (GBC) was convened in Sa Kaeo Province of Thailand on Monday, 21 July 2008, the result of which has eased tensions and allowed the situation in the area to remain calm. Both sides have also agreed to hold further talks and the report of the GBC is now being scrutinized by the Prime Ministers of the two countries. Meanwhile, both Prime Ministers have also expressed their wish to convene, as soon as possible, the Thailand-Cambodia Joint Boundary Commission (JBC) in order to accelerate its work of surveying and demarcating the entire stretch of the Thai-Cambodian border so that similar problems will not arise in the future to affect the cordial relations between our two countries and so that the peoples on both sides of the border can enjoy the full benefit of cooperation and prosperity.

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3. The aforementioned position has received a clear and unanimous support from ASEAN, of which both Thailand and Cambodia are members. In a statement by the ASEAN Chair dated 20 July 2008, ASEAN Foreign Ministers expressed their hope that, through the bilateral talks, Thailand and Cambodia will find a way to defuse the situation, and offered facilities to be placed at the disposal of the two countries concerned. Thailand welcomes the ASEAN Chair's statement calling for ASEAN solidarity and the early resolution of the issue.

4. Nevertheless, the Royal Thai Government is obliged to provide an account of facts on certain specific issues referred to in the above letter from the Permanent Representative of Cambodia as follows:

(a) Regarding the issue of the area of "Keo Sikha Kiri Svara Pagoda" referred to in the above letter from the Permanent Representative of Cambodia, it should be noted that the area adjacent to the Temple of Preah Vihear, where the said Pagoda is situated, is part of Thailand's territory. Thailand's position in this regard is fully consistent with the judgment of the International Court of Justice (ICJ) of 15 June 1962 in the *Case Concerning the Temple of Preah Vihear*, which Thailand has fully and duly implemented;

(i) Cambodia's territorial claim in this area is based on Cambodia's unilateral understanding of the said ICJ judgment that a boundary line was determined by the Court in that judgment. Thailand contests this unilateral understanding since the ICJ ruled in this case that it did not have jurisdiction over the question of land boundary and did not in any case determine the location of the boundary between Thailand and Cambodia. In addressing the final submissions of Cambodia at the end of the oral proceedings calling for pronouncements on the legal status of the "Annex I map", which was mentioned in the above letter from the Permanent Representative of Cambodia, and the frontier line in the disputed region, the ICJ stated that the said submissions "can be entertained only to the extent that they gave expression to grounds and not as claims to be dealt with in the operative provisions of the judgment" (*Case Concerning the Temple of Preah Vihear* (Cambodia v. Thailand) (Merits) ICJ Reports 1962, p. 36). Taking into account article 59 of the Statute of the ICJ and the fact that the issue before the ICJ in this case was limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear, the boundary line claimed by Cambodia has no legal status from the judgment;

(ii) Thus, the location of boundary line in the area adjacent to the Temple of Preah Vihear is still to be determined by both countries in accordance with international law. In 2000, Thailand and Cambodia signed the Memorandum of Understanding on the Survey and Demarcation of Land Boundary and established a Joint Boundary Commission (JBC) to be responsible for the said survey and demarcation of the entire stretch of the common land boundary. A fact sheet regarding the overlapping territorial claims of Thailand and Cambodia in the area of the Temple of Preah Vihear is attached herewith (see annex I);

(iii) It is within this context that Thailand has made repeated protests (i.e. 10 April 2008, 17 May 2007, 8 May 2005 and 25 November 2004) regarding the presence of the "Keo Sikha Kiri Svara Pagoda" and other structures as well as that of Cambodian settlers and military personnel in the area. The four

protests were made in particular on the basis of article 5 of the 2000 Memorandum of Understanding mentioned above, under which both sides agreed not to carry out any work resulting in changes of environment of the frontier zone, pending the survey and demarcation of the common land boundary. To date, no action has been undertaken by Cambodia to address Thailand's concerns, protests and requests;

(b) Regarding the inscription of the Temple of Preah Vihear on the World Heritage List on 7 July 2008, as unilaterally proposed by the Kingdom of Cambodia, attention should be drawn to the statement by the Minister for Foreign Affairs of Thailand at the thirty-second session of the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Committee in Quebec City, Canada, on 7 July 2008. The said statement unequivocally put on the record Thailand's objection, observations and reservations on the issue concerned. Among other things, as a State party to the 1972 World Heritage Convention, the Royal Thai Government reaffirms her right to apply article 11 (3), which stipulates that the inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State, will in no way prejudice the rights of the party to the dispute. Thus, the inscription of the Temple of Preah Vihear on the World Heritage List shall in no way prejudice Thailand's rights regarding her territorial integrity and sovereignty as well as the survey and demarcation of land boundary in the area and Thailand's legal position. A copy of the said statement is attached (see annex II).

5. In conclusion, the Royal Thai Government reiterates her firm conviction that the present challenge shall be resolved amicably through friendly bilateral consultations and negotiations within the relevant bilateral frameworks established by both countries, and on the basis of goodwill, the principle of good neighbourliness, the long-standing friendship between the two countries and the spirit of ASEAN solidarity that has underpinned this regional organization since its inception.

I have the honour to request that the text of the present letter and its annexes be circulated as a document of the Security Council.

(*Signed*) Don **Pramudwinai**
Ambassador
Permanent Representative of the Kingdom of Thailand
to the United Nations

Annex I to the letter dated 21 July 2008 from the Permanent Representative of Thailand addressed to the President of the Security Council

Fact sheet: overlapping territorial claims of Thailand and Cambodia in the area of the Temple of Preah Vihear

1. There is currently an area adjacent to the Temple of Preah Vihear that is subject to overlapping territorial claims of Thailand and Cambodia. The location of the boundary line in this area is therefore still to be determined by both countries in accordance with international law[1].

2. In this area, the territorial claim of Thailand is an assertion of what Thailand[2] considers to be territory under Thailand's sovereignty after due implementation of the Judgment of the International Court of Justice (ICJ) of 15 June 1962 in the *Case Concerning the Temple of Preah Vihear*.

3. Cambodia's territorial claim in this area relies on a boundary line that appears to be presented as legally binding upon the two States, based on Cambodia's unilateral understanding of the said ICJ Judgment[2]. Thailand contests this unilateral understanding since the ICJ ruled in the said Judgment that it did not have jurisdiction over the question of land boundary, and did not in any case determine the location of the boundary between Cambodia and Thailand (details as attached). Taking into account Article 59 of the Statute of the ICJ and the fact that the issue before the ICJ in this case was limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear, the boundary line claimed by Cambodia has no legal status from the Judgment.

[1] On 14 June 2000, the two countries concluded the Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on the Survey and Demarcation of Land Boundary. Work under this MOU is ongoing.

[2] Aide-Mémoire, dated 11 April 2008, from the Ministry of Foreign Affairs and International Cooperation of the Kingdom of Cambodia to Royal Thai Embassy, Phnom Penh.

The International Court of Justice did not address the question of land boundary in the *Case Concerning the Temple of Preah Vihear*[1]

I. The Court ruled that it did not have jurisdiction over the question of land boundary

In both its Application[2] and Memorial[3], Cambodia submitted to the Court to

> "adjudge and declare, whether the Kingdom of Thailand appears or not:
>
> (1) that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear;
>
> (2) that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia."[4]

The above submissions of Cambodia determined the limits of the jurisdiction of the Court. The Court, in its Judgment of 26 May 1961 (Preliminary Objections), stated that the case was a dispute about territorial sovereignty[5]. The Court further confirmed its scope of jurisdiction in its Judgment of 15 June 1962 (Merits):

> "In its Judgment of 26 May 1961, by which it upheld its jurisdiction to adjudicate upon the dispute submitted to it by the Application filed by the Government of Cambodia on 6 October 1959, the Court described it; the following terms the subject of the dispute:
>
> > "In the present case, Cambodia alleges a violation on the part of Thailand of Cambodia's territorial sovereignty over the region of the Temple of Preah Vihear and its precincts. Thailand replies by affirming that the area in question lies on the Thai side of the common frontier between the two countries, and is under the sovereignty of Thailand. This is a dispute about territorial sovereignty."
>
> Accordingly, the subject of the dispute submitted to the Court is confined to a difference of view about sovereignty over the region of the Temple of Preah Vihear."[6]

During the merits phase, attempts were made by Cambodia to extend the scope of the dispute before the Court to include the question of the frontier line between Thailand and Cambodia[7]. However, this was not accepted by the Court, as confirmed by the following statement:

> "Adhering finally to the Submissions presented at the end of the oral proceedings, the Court, for the reasons indicated at the beginning of the present Judgment, finds that Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the

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[1] *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand); (Preliminary Objections)*, ICJ Reports 1961, pp. 17-38; *(Merits)*, ICJ Reports 1962, pp. 6-38

[2] Application dated 30 September 1959, Pleadings, Oral Arguments, Documents, *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) 1962*, Vol. 1, p.15

[3] *Ibid.*, p. 118-119

[4] *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)(Merits)*, ICJ Reports 1962, p. 9

[5] *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)(Preliminary Objections)*, ICJ Reports 1961, pp. 22

[6] *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)(Merits)*, ICJ Reports 1962, p. 14

[7] Submissions read at the hearing of 5 March 1962, and Submissions, entitled Final Submissions, read at the hearing of 20 March 1962, *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Merits)*, ICJ Reports 1962, pp. 10-11. In response, Thailand asked the Court not to entertain, *inter alia*, Cambodia's claim regarding the frontier line as it was "put forward too late", *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Merits)*, ICJ Reports 1962, p. 11.

frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment."[10]

II. The Judgment did not determine the location of the boundary between Cambodia and Thailand

In the operative provisions of the Judgment, the Court did not address the question of the boundary line in anyway but limited itself to three other questions submitted to it by Cambodia. The only operative findings of the Court are:

"(a) The Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;
(b) Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory; and
(c) Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities."[11]

At the outset of the Judgment, after stating that the Court is confined to the question of the sovereignty over the region of the Temple of Preah Vihear, it added:

"To decide this question of territorial sovereignty, the Court must have regard to the frontier line between the two States in this sector. Maps have been submitted to it and various considerations have been advanced in this connection. The Court will have regard to each of these only to such extent as it may find in them reasons (emphasis added) for the decision it has to give in order to settle the sole dispute submitted to it, the subject of which has just been stated."[12]

The Court underlined subsequently in the Judgment that it addressed the questions of maps and frontier line merely as

"*grounds* (emphasis added) on which the Court bases its decision"[13].

In addition, as mentioned previously, in addressing the Final Submissions of Cambodia at the end of the oral proceedings calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, the Court stated that the said Submissions

"can be entertained only to the extent that they give expression to grounds (emphasis added), and not as claims to be dealt with in the operative provisions of the Judgment."[14]

It is further evident that the Court did not address the issue of the boundary line for the fact that, for the Court, it was

"unnecessary to consider whether, at Preah Vihear, the line as mapped does in fact correspond to the true watershed line in this vicinity, or did so correspond in 1904-1908, or if not, how the watershed line in fact runs."

Had the question of the boundary line been before the Court, it would have been necessary to deal with this issue.

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[10] *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Merits)*, ICJ Reports 1962, p. 34
[11] *Ibid.*, pp. 36-37
[12] *Ibid.*, p. 14
[13] *Ibid.*, p. 35
[14] *Ibid.*, p. 36

III. Consequently, the location of the land boundary is still to be determined in accordance with international law

a) Notification of compliance by Thailand:

On 6 July 1962, Thailand notified its decision to comply with Judgment of the Court by the official note from the Minister of Foreign Affairs of Thailand No (0801) 2223/92505 to the Secretary-General of the United Nations.

b) Thai-Cambodia 2000 MOU:

The precise location of the boundary line is still to be determined through the process of joint surveying and demarcation by Thailand and Cambodia in accordance with Article 1 of the Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on the Survey and Demarcation of Land Boundary. This task has been entrusted to the Thailand-Cambodia Joint Committee on Demarcation for Land Boundary (JBC). Pending the demarcation of the land boundary, both countries agree that "to facilitate the effective survey along the entire stretch of the common land boundary, authorities of either Government and their agents shall not carry out any work resulting in changes of environment of the frontier area, except that which is carried out by the Joint Technical Sub-Commission in the interest of the survey and demarcation"[1].

[1] Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on the Survey and Demarcation of Land Boundary, Article V

Annex II to the letter dated 21 July 2008 from the Permanent Representative of Thailand to the United Nations addressed to the President of the Security Council

Statement by His Excellency Mr. Noppadon Pattama, Minister for Foreign Affairs of Thailand and head of the Thai delegation to the thirty-second session of the World Heritage Committee

Quebec City, Canada
7 July 2008

Madame Chairperson,
Distinguished Members of the World Heritage Committee,
Ladies and Gentlemen,

It is my great honour to lead the Thai delegation to attend the 32nd Session of the World Heritage Committee in this beautiful Quebec City.

With regard to the decision just adopted by the Committee, Thailand wishes to put on record her objection and the following observations and reservations, based on the drawbacks and shortcomings of the various qualifications necessary for the complete status of the World Heritage Site as appeared in the ICOMOS' evaluations of the cultural properties.

In addition to the unresolved border disputes of the area surrounding the Temple of Preah Vihear, Thailand cannot support the decision. Thailand wishes to point out that the decision is not practical because any subsequent action or measure to be taken by Cambodia or any third party in the area adjacent to the Temple of Preah Vihear, which is Thai territory cannot be carried out without Thailand's consent. As a state party to the 1972 World Heritage Convention, Thailand reaffirms her full rights to apply the article 11 (3) which stipulates that the inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one state will in no way prejudice the rights of the party to the dispute.

Thailand reaffirms her protest and objection to any document submitted by Cambodia for the inscription of the Temple of Preah Vihear as a World Heritage site, particularly the Experts Technical Report and the flawed Progress Report in which Thailand was not fully engaged and from which was compelled to dissociate herself. Thailand wants to note to the World Heritage Committee that a practical management plan of the Temple of Preah Vihear will not be complete without Thailand's cooperation.

Thailand regrets that the World Heritage Committee has overlooked the fact that she is a major stakeholder and ignored the possibility for her to nominate the surrounding areas with features pertinent to the outstanding universal value of Preah Vihear Temple as a World Heritage site so that the full values of this property and its landscape setting can be realised. Therefore, Thailand reiterates her intention to nominate other features of the Temple located in her territory for World Heritage status so that the values of this property and its landscape setting can be fully realized. In this connection, we ask the Committee for its favourable consideration of Thailand's intention.

In short, Thailand is obliged to object the decision to inscribe the Temple of Preah Vihear on the World Heritage list, as unilaterally proposed by Cambodia and on the basis of incomplete integrity.

On behalf of the Thai delegation, I wish to reassure the World Heritage Committee that this inscription issue is but a single issue in the overall relations between Thailand and Cambodia. The Government of Thailand will continue to work closely with the Government of Cambodia to further their cooperation for the mutual benefit of the two countries and peoples.

In the end, I wish to reaffirm Thailand's reservations of her rights as contained in the Note dated 6 July 1962 from the Minister of Foreign Affairs of the Kingdom of Thailand to the Acting Secretary-General of the United Nations. The inscription of the Temple of Preah Vihear on the World Heritage list shall in no way prejudice Thailand's rights regarding her territorial integrity and sovereignty as well as the survey and demarcation of land boundary in the area and Thailand's legal position.